
Judiciary Committee

HB 2122

Title: An act relating to providing compensation for persons who have been wrongfully convicted and imprisoned.

Brief Description: Authorizing payment of claims for wrongful conviction and imprisonment.

Sponsors: Representatives McDermott, Flannigan, Appleton, Santos and Ormsby.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides for a civil cause of action against the state by which persons wrongfully convicted of felonies may be awarded damages related to their wrongful conviction and incarceration.

Hearing Date: 2/20/07

Staff: Anne Woodward (786-7119) and Trudes Tango (786-7384).

Background:

For various reasons, a person who has been convicted of a crime may have his or her criminal conviction overturned. The Innocence Project, a non-profit legal clinic that offers legal assistance to people wrongfully convicted, reports that approximately 195 people in the United States have been exonerated as a result of post-conviction DNA testing results. Currently, 21 states have compensation statutes that allow the wrongfully convicted to seek damage awards either through an administrative process or the court system.

Persons wrongfully convicted of federal crimes are authorized by federal statute to bring an action for damages in the United States Court of Federal Claims. In 2004 Congress increased the damage award limit for persons who successfully bring a claim for wrongful conviction of a federal crime to up to \$100,000 for death row exonerees, and \$50,000 a year for non-death row exonerees.

If a person is wrongfully convicted of a state crime in a state that does not have specific statutes providing for wrongful conviction compensation, in order to seek compensation that person would

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likely bring an action under § 1983 of the Civil Rights Act or under a common law tort cause of action.

Washington law does not currently provide for a civil cause of action specific to compensation for persons wrongfully convicted and incarcerated.

Summary of Bill:

A civil cause of action is established by which persons wrongfully convicted of felonies in state court may bring suit against the state and be awarded damages for their wrongful conviction and incarceration.

Who may bring the claim:

A person who was wrongfully convicted and incarcerated of a felony in a state court may bring the claim. If the wrongfully convicted person is incapacitated and incapable of bringing the claim, or is a minor or nonresident of the state, the claim may be brought on his or her behalf by a relative, attorney, or person acting as the wrongfully convicted person's representative. If the wrongfully convicted person is deceased, no claim may be brought on his or her behalf.

A wrongfully convicted person who brings a claim under this act is not precluded from seeking any other available legal remedy to seek redress for his or her wrongful conviction and incarceration.

Statute of limitations:

The claim must be commenced within three years after the wrongfully convicted person has been pardoned or granted judicial relief on grounds consistent with innocence. Any action by the state challenging or appealing such a grant of relief tolls the three year period. Persons convicted, incarcerated, and released from custody prior to the effective date of this act may commence an action within five years of the act's effective date.

Establishment of claim:

The claim is to be brought in superior court. In order to be eligible to seek damages, a claimant must first establish by documentary evidence that:

- the wrongfully convicted person was convicted of a felony or felonies in state court and subsequently served all or part of a sentence for that conviction;
- the wrongfully convicted person is not currently incarcerated for any offense;
- the wrongfulness of the conviction has been established by pardon, reversal, or vacation of the conviction, a "not guilty" verdict on retrial, or dismissal of the accusatory instrument, provided that such action was taken "on grounds consistent with innocence"; and
- the claimant is likely to succeed at trial in proving that the person did not commit the acts charged or those acts did not constitute a crime, and that perjury or fabricated evidence attributable to the claimant did not cause or bring about the conviction.

Neither a guilty plea to a crime that the person did not commit, nor a confession later proved to be false, constitute perjury or fabricated evidence for the purposes of bringing or proving a claim under this act.

The state may not assert as a defense to a claim brought under this act any agreement entered into between the prosecutor's office and the wrongfully convicted person in which the person agreed to

forego legal action against the government if the prosecution took or refrained from certain action.

Award of damages:

If the wrongfully convicted person proves the elements of the claim by clear and convincing evidence, the court must award the claimant monetary damages and equitable relief that include the following:

- not less than \$50,000 per year of actual confinement, with an additional \$50,000 for each year served on death row;
- economic damages including but not limited to lost wages, costs associated with the person's criminal defense at trial and on appeal, restitution paid by the claimant, and medical costs incurred after release that are related to the circumstances of imprisonment;
- compensation for reintegrative services, such as job training;
- up to ten years of eligibility to participate in the health insurance plans offered by the public employees' benefits board;
- reasonable attorneys' fees for bringing the wrongful conviction claim, limited to \$75,000;
- at the court's discretion, an order vacating the person's record of conviction, provided that the record has not already been vacated, sealed, expunged or destroyed; and
- at the request of the claimant, access to the department's reentry services, including but not limited to community-based transition programs and long-term support programs.

The damage award may not be offset by any expenses incurred by the state or its political subdivisions related to the wrongfully convicted person's prosecution or incarceration.

No punitive or noneconomic damages may be awarded.

Right of appeal:

In the event that the superior court dismisses the claim, the court shall set forth the reasons for its decision in written findings of facts and conclusions of law. Review of the superior court action shall be "de novo," a legal term for a standard of review where the appellate court reviews the documentary evidence anew, instead of deferring to the lower court's decision.

Notice:

When a person's conviction has been pardoned, reversed, or vacated on grounds consistent with innocence, the person shall be provided with a copy of this act notifying him or her of this cause of action.

Appropriation: None.

Fiscal Note: Requested on February 16, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.